

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 928 of 1997

to

FIRST APPEALNo 985 of 1997

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

RABARI DAHYA MEVA

Appearance:

MR SJ DAVE, AGP, for the appellants
MR V.S. MODI for the respondents

CORAM : MR.JUSTICE Y.B.BHATT and
MR.JUSTICE C.K.BUCH

Date of decision: 06/05/98

COMMON ORAL JUDGEMENT (Per Y.B. Bhatt J.)

1. Heard the learned counsel for the respective

parties. Appeals are admitted. Mr. Vipul S. Modi waives service of Notice of the Appeal for the respondents-original claimants.

2. On the joint request of learned counsel for the respective parties these appeals are taken up for final hearing today.

3. These are appeals filed by the appellant State of Gujarat under section 54 of the Land Acquisition Act read with section 96, CPC, challenging the common judgement and awards passed by the Reference Court under section 18 of the said Act.

4. As a result of the hearing and discussion, a broad consensus has been arrived at between the learned counsel for the respective parties, on the basis of which we record our decision as discussed hereinafter.

5. Dealing with the minor points first, we observe that the Reference Court has awarded for fruit-bearing trees Rs.100/- per tree per one year of age, and Rs.80/- for non-fruit-bearing trees per tree per one year of age. In this context learned counsel for the respondents fairly conceded that the evidence in this regard may not be upto the satisfactory standard, or may not be entirely acceptable to a court of law, and in any case he concedes that the compensation awarded by the Reference Court under this head may be disallowed. We, therefore, hold and direct accordingly.

6. So far as compensation for wells and pipelines, etc., are concerned, the Reference Court has awarded Rs.30,000/- for constructed pucca well and Rs.5000/- for each kuchha well. In this context learned counsel for the respondent fairly conceded that compensation under this head may also be disallowed in view of the decision of the Supreme Court in the case of State of Bihar, reported at 1996 (10) SCC page 635, following the earlier decision of the Supreme Court in the case of O. Janardan Reddy, reported at 1994 (6) SCC page 456. Thus, we hold and direct that the compensation for wells (both pucca and kuchha) and the consequential compensation for pipelines, etc., is unjustified and therefore requires to be deducted from the total compensation payable. We, therefore, hold and direct accordingly.

7. Another aspect which requires to be noted is that although the Reference Court has not referred to the aspect of any particular valuation for New Tenure lands, as distinct from Old Tenure lands, either in its

judgement or in the operative part of the order, a sum of 5% has been deducted on account of the fact that some of the lands were New Tenure lands. This deduction is reflected in the Schedule attached to the award which forms part thereof. Learned counsel for the appellant has fairly conceded that no such deduction would be justifiable in view of the decision of the Supreme Court in the case of State of Maharashtra reported at AIR 1996 SC page 904, which decision has been followed by a Division Bench of this court in the case of Deputy General Manager, ONGC Vs. Chaturji Lalaji, reported at 1998(1) GLR page 130. Thus, such a deduction not being justified in law, requires the award to be modified, and the deduction to be deleted. We, therefore, hold and direct accordingly.

8. So far as the market value of the acquired lands are concerned, the Reference Court has determined its market value at Rs.35000/- per hectare (Rs.350/- per Are) both in respect of irrigated and non-irrigated lands. In the context of the determination of the said market value, we have heard learned counsel for the appellants on the basis of such evidentiary material which has been referred to us for our consideration. However, ultimately learned counsel for the appellants was unable to sustain his submissions with a view to persuade us that the market value of the acquired lands which has been determined by the Reference Court is excessive and that some deduction in that regard is justifiable. Ultimately learned counsel for the appellant was required to accept that this determination requires to be upheld. We, therefore, hold and direct accordingly.

9. At this juncture we may observe that the treatment, the language used, the findings recorded and the directions given by the Reference Court in the context of section 23(1-A) and section 28 of the said Act are both confusing as also not sustainable at law. In this context, therefore, we hold and direct that the claimant shall be entitled to solatium at the rate of 30% on the compensation payable for the acquired lands on the basis of the market value determined by the Reference Court and as confirmed by us herein.

10. We further hold and direct that the respondents original claimants shall be entitled to additional compensation under section 23(1-A) of the said Act, computed at 12% per annum on such market value, for the period commencing from the date of publication of section 4 notification, to the date of the award of the Collector or the date of taking possession of the land, whichever

is earlier.

11. We further hold and direct that the respondents original claimants shall be entitled to interest under section 28 of the said Act, on the difference between the compensation awarded by the Collector under section 11 and the compensation computed on the market value of the amount as determined by the Reference Court and confirmed by us herein, at the rate of 9% per annum from the date of taking possession of the land for the first year, and at the rate of 15% per annum thereafter upto the date of payment or deposit of such difference in court.

12. No other contentions have been raised by either side.

13. Thus, these appeals are, therefore, partly allowed to the aforesaid extent with no order as to costs. Decree accordingly.
